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Caricatures / Cartoons

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Wojciech Brzozowski

Caricatures / Cartoons

DEF: Now mostly used synonymously, the terms caricature (from Lat. *carnus* > Ital. *caricare*, to overload or surcharge, and hence to exaggerate) and cartoon (Lat. *charta* > Ital. *carta*, *cartone*, carton or cardboard) denote the satirical and hyperbolic representation of persons or societal and political issues by graphic means. Viewed through a cultural lens, the rights related to caricatures as culture have been most prominent. Caricatures can be considered a means for individuals, groups and communities 'to build their world view representing their encounter with the external forces affecting their lives' (cf. CESCR, General Comment no. 21, 2009). Offering, in the words of Sigmund Freud, a means to unmask disingenuous grandeur and to disparage the powerful, caricatures have been an important element in Western political discourse since at least the 18th century (Fuchs, 1921; Lange-meyer, 1984). Cartoonists such as James Gillray, Honoré Daumier, Thomas Nast, David Low or, more recently, Kevin Kallaugher have provided poignant commentary on current affairs; satirical periodicals such as *Simplicissimus*, *Punch*, *La Caricature*, or *Charlie Hebdo* have a long tradition as well.

More recently, however, caricatures have also been perceived as a *threat* to culture, namely in the context of lampooning faiths and religious figures. Both aspects – caricatures as an important means of criticism and as an attack on religion – have been at evidence in the so-called Mohammed cartoons controversy that originated in a series

of drawings published in a Danish newspaper in 2005.

INSTR: As an expressive medium, caricatures are protected by international and regional provisions on freedom of speech; on the national level, they may enjoy – often congruent – constitutional protection as works of art (e.g. in Article 5(3) of the German *Grundgesetz*). Article 19 ICCPR, which safeguards the right to 'impart information and ideas of all kinds in the form of art, or through any other media', and Article 10 ECHR, which protects 'information and ideas', also cover caricatures, as does the pertinent provision in the *American Convention on Human Rights* (Article 13(1)). The differing wordings in other regional instruments, however, already indicate varying scopes of protected expressions, possibly hinting at cultural differences as well: Article 9(2) ACHPR protects the right to express one's opinions 'within the law'; according to the *Cairo Declaration*, 'everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah' (Article 22(a)), and the revised *Arab Charter on Human Rights* requires 'conformity with the fundamental values of society' (Article 32(2)). Nor is speech unlimited under the ICCPR or the ECHR: As any other form of expression, caricatures may be restricted if they infringe, *inter alia*, upon the rights and reputations of others. Incendiary or racist caricatures are not protected either: In the case of the ECHR they may be considered incompatible with the provisions of the Convention (Article 17), and Article 20 ICCPR obliges state parties to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This provision was also invoked when, in the wake of the Danish cartoons, members of the Organisation of Islamic Co-operation (OIC) intensified their efforts to introduce new international norms prohibiting 'defamation of religions'.

CASES: Since caricatures have generally been subsumed under provisions of free speech, the criteria developed by courts for limiting speech are also applicable, particularly with regard to defamation. Under the ECtHR's categorisation, caricatures will likely constitute value judgments

rather than factual statements; therefore, they may not require proof but can still be prosecuted if excessive [PALOMO SÁNCHEZ, 2011]. There is very limited scope, however, for restrictions if a caricature is political in nature or expresses views on questions of public interest [FÉRET, 2007]. The ECtHR acknowledges that caricatures rely on satirical elements, and that satire is 'a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate.' As a consequence, the Court examines 'with particular care' interference with an artist's right to such expression [VEREINIGUNG BILDENDER KÜNSTLER, 2007; ERKANLI 2002; LEROY 2008]. Humour, however, does not justify racism or incitement [M'BALA M'BALA, 2015], and it may also be counterbalanced by the protection of morals. On several occasions, the ECtHR has deemed the protection of religious feelings a legitimate aim [e.g. OTTO-PREMIER-INSTITUT, 1994]. Yet the ECtHR has not assessed the Danish cartoons on the merits [BEN EL MAHI, 2006], nor has any other international body [cf. SAID AHMAD, 2008]. In proceedings before Western national courts, these caricatures have been protected as legitimate speech on politically relevant matters [DET ISLAMISKE TROSSAMFUND (2), 2008; VAL, 2008]. In Jordan and Yemen, however, editors who republished the cartoons were found guilty under (religiously inspired) provisions prohibiting defaming the Prophet.

VIEWS: The assessment of the Danish cartoons differed not only in the courts according to jurisdiction. There were also significant differences in their political and scholarly appraisal. When first published in 2005, the drawings were mostly criticised by politicians as unnecessarily divisive and offensive. When violent attacks on publishers and cartoonists ensued, however, more emphasis was put on the cartoons as exercise of free speech; after the attacks on the French satirical *Charlie Hebdo* in January 2015, the right to criticise religion was elevated to a central tenet of public debate.

In the literature, those critical of the cartoons highlighted the multicultural aspects of the controversy and saw it as evidence of increasing 'Islamophobia' and of lacking acceptance for reli-

gious minorities (Sutcliffe 2007; Cram 2009; Doebler 2009). It was also pointed out that previous case law (especially of the ECtHR) did not rule out regulation of religiously offensive speech or of a discriminatory nature (Cerone 2008; Kahn 2011).

Particularly in the context of efforts to restrict 'defamation' of religion, however, most authors have underlined the important role that caricatures play in public discourse; recourse to religious norms was considered unsuitable in a liberal democracy; the conceptual and procedural difficulties when protecting religions from insult would also be considerable (Boyle, 2006; Post, 2007; Bielefeldt, 2012).

CONCL: Caricatures can be considered a (regional) cultural practice that is entitled to protection, within the legal framework and the limits established for other forms of expression. This protection extends to satirical attacks on religious tenets, which have been an early and continuing feature of caricature, as illustrated by the third-century Alexamenos graffito in Rome or the anti-Papal and anti-Lutheran drawings of the Reformation and Counter-Reformation. The controversy over the Danish cartoons has shown, however, that there are stark cultural differences with regard to what may be the subject of criticism and ridicule, particularly with regard to religion.

Yet the OIC's attempts to establish 'defamation of religion' as a new limitation on the international level of expression in general and satire in particular have failed. On the contrary, the debate over defamation has led to a clarification – and fortification – of the protection that caricatures and other potentially offensive means of expression enjoy within the political and societal discourse, regardless of potential offence to religions (cf. Venice Commission, 2010; CCPR, General Comment No. 34 (2011)). Still, the cartoon controversy has shown that while protection for cultural rights may well be universal (CESCR, General Comment no. 21 (2009)), in many instances the objects of such rights clearly are not. The converse legal reactions to the cartoons indicate some significant differences in legal culture(s). Where religion continues to provide the main rationale for a legal order, religious precepts on blasphemy, sacrilege and even apostasy may require the prohibition of certain caricatures. In a secularised

legal order, on the other hand, religion may be an object of protection, yet it does no longer determine the substance of commands and prohibitions (Langer, 2013). Under a human rights approach, the religious sensitivities of the faithful may well be safeguarded; a religious creed or its prophets, on the other hand, are not protected.

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Lorenz Langer

Censorship

DEF/HIST: Basically, we could distinguish between *ex-ante* censorship (or 'prior restraint'), i.e. the suppression of free expressions, including artistic or media content, before their creation, presentation or publication, and *ex-post* measures executed to prevent their exposure to a wider public. However, in the digital age such distinctions tend to become obsolete, especially due to the simultaneity of producing and distributing information and other content on the Internet. More sense, especially in legal and policy terms, could make a differentiation between direct (via a mandated institution, e.g. of the state) or indirect censorship, the latter often related to 'self-censorship'.

In China, Greece and other ancient societies, 'censorship was considered a legitimate instrument for regulating the moral and political life